IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7507 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAYANTIBHAI BABUBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7507 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR RC KODEKAR, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 06/09/2004

ORAL JUDGEMENT

The detenu has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by the order dated 19-3-2004 passed by the District Magistrate, Surat and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. The only contention raised by the learned advocate for the petitioner is that the detenu has submitted a representation by R.P.A.D. to the detaining authority through his advocate on 21-6-2004, copy of which has been annexed as Annexure-C at page 19, which has been received by the authority on 23-6-2004. However, said representation has been forwarded by the detaining authority to the State Govt. on 30-6-2004 and it has been rejected by the State Govt. on 9-7-2004 and, therefore, there is a delay in considering the representation. Learned AGP has fairly admitted the same.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, it appears that the detenu has sent the representation on 21-6-2004 to the detaining authority which was fowarded to the State Government on 30-6-2004 and though said representation has been rejected by the State Govt. on 9-7-2004. However, no explanation has been putforward by the authority in the affidavit filed explaining satisfactorily for the delay and hence, in view of the aforesaid judgment, the order of detention is illegal and the same cannot be sustained.

6. The petition is allowed. The impugned order of detention dated 19-3-2004 passed against the detenu

Jayantibhai Babubhai Vasava is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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